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Letter dated 31 May 2005 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a letter dated 27 May 2005 addressed to you by Reşat Çağlar, Representative of the Turkish Republic of Northern Cyprus (see annex).

I would be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 29, and of the Security Council.

(*Signed*) Baki **İlkin**
Ambassador
Permanent Representative

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Annex to the letter dated 31 May 2005 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to refer to the letter dated 8 April 2005 addressed to you by the Greek Cypriot representative in New York and circulated as a document of the General Assembly and of the Security Council (A/59/777-S/2005/234), which contained distorted and misleading information regarding a lawsuit brought against Turkey by a Greek Cypriot at the European Court of Human Rights.

It should be mentioned at the outset that the decision of the Court (Third section) in the application by Myra Xenides-Arestis against Turkey (No. 46347/99) is a preliminary decision on admissibility. The Court considered that, in the light of the parties' submissions, the complaints raise serious issues of fact and law under the European Convention, the determination of which requires an examination of the merits.

The Third Section does accept the view that international law recognizes the legitimacy of legal arrangements and transactions in certain situations akin to those existing in TRNC, thereby rejecting the view put forth by the applicant and the intervening third party (the Greek Cypriot Administration) that Law No. 49/2003 of TRNC providing for compensation for Greek Cypriot property in North Cyprus, has no valid legal basis in international law. Although the Court does not consider the remedy provided under Law No. 49/2003 to be adequate, it gives a reasonably clear indication of changes TRNC could make to that Law to meet the requirements of an effective domestic remedy. The Court's extensive references to the provisions of Law 49/2003 throughout its decision clearly demonstrate the importance the Court attached to the question of domestic remedies in TRNC. Moreover, the Court does not reject Turkey's arguments for, or accept the applicant's and the Greek Cypriot arguments against, the possibility of an effective domestic remedy under article 35 (1) of the Convention being introduced after an application has been filed but before a decision on admissibility has been made.

It may be recalled that the Annan plan provided for the establishment of a property board to deal with applications relating to property affected by events since 1963, and not merely by events since 1974. The plan acknowledged that the reciprocal property issue in Cyprus needed a sui generis solution. This indeed shows that the issue of property in Cyprus is recognized as being too complicated to be amenable to settlement by way of individual application to the Court, such as that by Myra Xenides-Arestis.

It was thought that the Compensation Commission established under Law 49/2003 would have gained more significance after the Greek Cypriot side, on the instigation of the Greek Cypriot Administration, had rejected the Annan plan. That Administration has, however, also taken drastic measures to prevent Greek Cypriots from applying to the Compensation Commission. Such measures have amounted to threats and stigmatization of those who might apply to the Commission.

It should be emphasized that the reciprocal property issue in Cyprus needs a political solution. The landscape in Cyprus has undergone significant transformation over the past decades and it is not possible now to turn the clock back as though nothing has changed. The Greek Cypriot side has also taken measures as to the

expropriation of Turkish Cypriot property in the South of the island. All Turkish Cypriot properties in the South have, by virtue of a law passed by the Greek Cypriot parliament, come under the administration of the Greek Cypriot authorities, who refuse claims of possession by Turkish Cypriots. Moreover, such properties have extensively been compulsorily acquired or subjected to de facto expropriation. The Greek Cypriot authorities have made public statements to the effect that compensation shall not be paid to any Turkish Cypriot until there is a political settlement in the island.

On the other hand, contrary to its position relating to Turkish Cypriot property in the South, the Greek Cypriot Administration is encouraging applications against Turkey in the European Court of Human Rights, as well as the commencement of legal proceedings in the courts in the South. Moreover, arrest warrants are being issued by the courts in the South against the present users. Such measures that are being encouraged and sponsored by the Greek Cypriot Administration not only ignore the accrued rights of the Turkish Cypriots but tend to prolong their political and economic isolation and restrict their freedoms.

It should be urged upon the Greek Cypriot Administration that such measures complicate further the issue of property in the island and undermine the relations between the Greek Cypriots and the Turkish Cypriots and therefore have a negative effect on efforts for an overall political settlement in the island.

(*Signed*) Reşat **Çağlar**
Representative
Turkish Republic of Northern Cyprus